

BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL
Chairman

JIM IRVIN
Commissioner

MARC SPITZER
Commissioner

In the matter of

MICHAEL LYNN BILL
d/b/a Arizona Viaticals Settlements and
Annuities
5810 West Mescal
Glendale, AZ 85034

BENEFICIAL ASSISTANCE
a/k/a Beneficial Assurance, Ltd.
t/a Imtek Funding Corporation
8003 Corporate Drive, Ste. C
Baltimore, MD 21236

WILLIAM R. EVANS, CHARTERED
8003 Corporate Drive, Ste. C
Baltimore, MD 21236

RUTTENBERG & ASSOCIATES
INSURANCE MARKETING, INC.
d/b/a Viatical Center
1603 Visa Drive, Ste. 3
Normal, IL 61761,

Respondents.

DOCKET NO. S-03460A-01-0000

DECISION NO. 64649

**ORDER TO CEASE AND DESIST, ORDER
OF RESTITUTION, ORDER FOR
ADMINISTRATIVE PENALTIES AND
CONSENT TO SAME
BY: BENEFICIAL ASSISTANCE**

RESPONDENT BENEFICIAL ASSISTANCE elects to permanently waive any right to a hearing and appeal under Articles 11 and 12 of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* (“Securities Act”) with respect to this Order To Cease And Desist, Order of Restitution, Order for Administrative Penalties and Consent to Same (“Order”). BENEFICIAL ASSISTANCE admits the jurisdiction of the Arizona Corporation Commission (“Commission”); neither admits nor denies the Findings of Fact and Conclusions of Law contained in this Order; and consents to the entry of this Order by the Commission, for purposes of this proceeding only.

I.

FINDINGS OF FACT

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution, and the Securities Act.

2. BENEFICIAL ASSISTANCE (“BENEFICIAL”) a/k/a Beneficial Assurance, Ltd. t/a Imtek Funding Corporation (“BENEFICIAL”), whose address is 8003 Corporate Drive, Ste. C, Baltimore, MD 21236, was at all relevant times in the business of offering and selling viatical settlement contracts to investors. BENEFICIAL entered into contracts with various agents, including WILLIAM R. EVANS, CHARTERED, (“EVANS”), RUTTENBERG & ASSOCIATES INSURANCE MARKETING, INC. d/b/a Viatical Center (“VC”), and MICHAEL LYNN BILL (“BILL”) in order to effect sales of the viatical settlement contracts.

3. From at least June 1998 through at least April 1999, BENEFICIAL, through its agents, offered and sold securities in the form of viatical settlement contracts and investment contracts to at least three Arizona investors. A viatical settlement contract involves the purchase of an interest in the proceeds from a life insurance policy of a terminally ill individual. Various viatical companies purchase the policies at a discount and re-sell the benefits to investors at less than the full face value. When the policy matures, that is when the insured dies, the investor receives the full face value as return of investment plus profit.

4. On or around June 1998, BENEFICIAL entered into a “Producer agreement” with respondent BILL, whereby BILL agreed to sell viatical programs of BENEFICIAL. BENEFICIAL agreed to compensate BILL from 4% for sales of 12 month policies to 9% for sales of 48 month policies.

5. An agent of BENEFICIAL provided potential investors with a brochure stating that investors could earn fixed returns as high as 65% in a “perfect no risk investment.” . The brochure stated that viatical settlement contracts were “a proven investment,” an “act of compassion,” and a “win/win situation.”

1 6. Once an individual decided to invest, the investor entered into a “Purchase
2 Authorization Agreement” with BENEFICIAL as “agent.” BENEFICIAL agreed to act on the
3 investor’s behalf to identify and qualify a policy for purchase, and to receive 15% to 20% of the
4 purchase funds for administrative costs. The investor could choose a viatical policy with a life
5 expectancy of from 12 to 48 months.

6 7. The investor wrote a check to EVANS to be placed in a trust account maintained by
7 EVANS. EVANS had an agreement with BENEFICIAL, whereby EVANS would become the
8 owner of the purchased policies and attorney-in-fact for the investor. EVANS would be
9 responsible for continuing premium payments, tracing patient progress, monitoring medical
10 history, notifying the investor of policy maturity, filing death claims and making other
11 disbursements from the trust account, including fees to various participants. Investors were given
12 insufficient financial information at the time of sale with which to determine the continuing ability
13 of EVANS or BENEFICIAL to pay premiums until maturity of a policy.

14 8. The Purchase Authorization Agreement provided no other information about the use of
15 proceeds, including but not limited to costs to purchase the policy, fees to VC, fees to EVANS, and
16 commissions to BILL.

17 9. BENEFICIAL, through BILL, sold policies to at least three individuals for a total of
18 \$186,843 and a value at maturity of \$201,478. BILL received at least \$12,819 in commissions for
19 the sales.

20 10. In connection with the offer or sale of viatical settlement contracts within or from
21 Arizona, BENEFICIAL directly or indirectly violated A.R.S. § 44-1991. BENEFICIAL’s
22 conduct includes, but is not limited to, the following:

- 23 **a)** BENEFICIAL failed to provide certain material information to investors about
24 BENEFICIAL or EVANS, including but not limited to past operations, balance
25 sheets, statements of income, retained earnings, and cash flows that would reflect the
26 financial position of these entities.

b) BENEFICIAL's agent distributed literature that misrepresented the investment as a "no risk" opportunity;

c) BENEFICIAL failed to provide investors with certain material information about the use of investor proceeds, such as the cost to purchase the policy, the fees and commissions payable to EVANS, BENEFICIAL, BILL, VC, medical advisors, or any other participants in the program.

II.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and the Securities Act.

2. BENEFICIAL offered or sold securities within or from Arizona, within the meaning of A.R.S. §§ 44-1801(15), 44-1801(21), and 44-1801(26).

3. BENEFICIAL violated A.R.S. § 44-1841 by offering or selling securities that were neither registered nor exempt from registration.

4. BENEFICIAL violated A.R.S. § 44-1842 by offering or selling securities while neither registered as a dealer or salesman nor exempt from registration.

5. BENEFICIAL violated A.R.S. § 44-1991 by (a) making untrue statements or misleading omissions of material facts through agents, and (b) engaging in transactions, practices or courses of business which operate or would operate as a fraud or deceit.

6. BENEFICIAL's conduct is grounds for a cease and desist order pursuant to A.R.S. § 44-2032.

7. BENEFICIAL's conduct is grounds for an order to make an offer of repurchase pursuant to A.R.S. § 44-2032.

8. BENEFICIAL's conduct is grounds for administrative penalties under A.R.S. § 44-2036.

1 **III.**

2 **ORDER**

3 THEREFORE, on the basis of the Findings of Fact, Conclusions of Law, and
4 BENEFICIAL's consent to the entry of this Order, the Commission finds that the following relief
5 is appropriate, in the public interest, and necessary for the protection of investors:

6 IT IS ORDERED, pursuant to A.R.S. § 44-2032, that BENEFICIAL, and any of its agents,
7 employees, successors and assigns, permanently cease and desist from violating the Securities Act.

8 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2032, that BENEFICIAL shall offer
9 to repurchase the investments from investors shown on the records of the Commission in the face
10 value amount of \$201,478.04, subject to set offs for payments made on matured policies, and
11 relevant payments made by other respondents.

12 A letter outlining the offer to repurchase, including information about this Order, shall be
13 submitted for approval by the Director of Securities within 10 days of the entry of this order. The
14 letter shall be mailed to all investors within 10 days after approval by the Director. Investors shall
15 be provided 30 days to accept or reject the offer to repurchase. Payment on repurchases shall be
16 made in accordance with the attached schedule. Should any investor decline to accept the
17 repurchase of a policy under the attached schedule, the next policy due for an equal or lesser
18 amount after the declining investor shall be paid on the date that the declining investor would have
19 been paid.

20 Payments shall be made by cashier's check or money order on a quarterly basis, payable to
21 investors according to the attached schedule "A".

22 If BENEFICIAL does not comply with this offer to repurchase, any outstanding balance
23 shall be in default and shall be immediately due and payable as restitution. If BENEFICIAL's
24 letter to investors fails to meet the approval of the Director, BENEFICIAL shall be deemed to be
25 in non-compliance with the offer to repurchase.

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1 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that BENEFICIAL shall pay
2 an administrative penalty in the amount of \$20,000, with \$5,000 due and payable upon entry of
3 this Order. If BENEFICIAL completes the offer to repurchase, the administrative penalty shall be
4 reduced to \$5,000 already paid. Payment shall be made by cashier's check or money order on the
5 date of this Order, payable to the "State of Arizona."

6 IT IS FURTHER ORDERED that this Order shall become effective immediately.

7 BY ORDER OF THE ARIZONA CORPORATION COMMISSION

8
9
10 CHAIRMAN

COMMISSIONER

COMMISSIONER

11 IN WITNESS WHEREOF, I, BRIAN C. McNEIL,
12 Executive Secretary of the Arizona Corporation
13 Commission, have hereunto set my hand and caused the
14 official seal of the Commission to be affixed at the
15 Capitol, in the City of Phoenix, this _____ day of
16 _____, 2002.

17
18
19 _____
20 BRIAN C. McNEIL
21 Executive Secretary

22
23 DISSENT

24
25 This document is available in alternative formats by contacting Shelly M. Hood, Exec. Asst. to
26 Exec. Secretary, voice phone number 602-542-3931, E-mail shood@cc.state.az.us.

enforce/cases/Arizona Viaticals/pleadings/Consent Beneficial (2)
(SF)

1 7. While this Order settles this administrative matter between BENEFICIAL
2 ASSISTANCE and the Commission, BENEFICIAL ASSISTANCE understands that this Order
3 does not preclude the Commission from instituting other administrative proceedings based on
4 violations that are not addressed by this Order.

5 8. BENEFICIAL ASSISTANCE understands that this Order does not preclude the
6 Commission from referring this matter to any governmental agency for administrative, civil, or
7 criminal proceedings that may be related to the matters addressed by this Order.

8 9. BENEFICIAL ASSISTANCE understands that this Order does not preclude any
9 other agency or officer of the state of Arizona or its subdivisions from instituting administrative,
10 civil or criminal proceedings that may be related to matters addressed by this Order.

11 10. BENEFICIAL ASSISTANCE agrees that it will not apply to the state of Arizona
12 for registration as a securities dealer or salesman or for licensure as an investment adviser or
13 investment adviser representative, or file for an exemption from registration, until such time as all
14 restitution and penalties under this Order are paid in full. Notwithstanding the foregoing,
15 Beneficial may file an application for exemption to sell viatical settlement contracts before final
16 repurchase amounts are paid under Schedule A, but Beneficial understands that the Arizona
17 Corporation Commission will delay any final decision on such application at least until such time
18 as repurchase amounts are paid in full.

19 11. BENEFICIAL ASSISTANCE agrees that it will continue to cooperate with the
20 Securities Division including, but not limited to, providing complete and accurate testimony at any
21 hearing in this matter and cooperating with the state of Arizona in any related investigation or any
22 other matters arising from the activities described in this Order.

23 12. BENEFICIAL ASSISTANCE consents to the entry of this Order and agrees to be
24 fully bound by its terms and conditions. If BENEFICIAL ASSISTANCE breaches any provision
25 of this Order, the Commission may vacate this Order and restore this case to its active docket.

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13. _____represents that he is _____(title) of BENEFICIAL ASSISTANCE and has been authorized by BENEFICIAL ASSISTANCE to enter into this Order for and on behalf of it. _____represents that he is authorized by law to enter into this Order for and on behalf of BENEFICIAL ASSISTANCE.

BENEFICIAL ASSISTANCE

By (name and title)

Its (title)

SUBSCRIBED AND SWORN TO BEFORE me this _____ day of _____, 2001.

NOTARY PUBLIC

My Commission Expires: